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No. 257

In the Supreme Court of the United States

OCTOBER TERM, 1958

SCHENLEY DISTILLERS, INC. AND JOSEPH S. FINCH AND COMPANY, PETITIONERS

v.

THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINIONS BELOW

The opinion of the Court of Appeals (Pet. App. A, pp. 1–8) is reported at 255 F. 2d 334. The opinion of the District Court (Pet. App. B, pp. 1–19) is reported at 153 F. Supp. 898.

JURISDICTION

The judgment of the Court of Appeals was entered on May 8, 1958. (Pet. App. A, p. 9.) Taxpayers' petition for a writ of certiorari was filed on August 6, 1958. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254 (1).

QUESTIONS PRESENTED

1. Whether the courts below erred in holding that the federal tax on distilled spirits is a valid excise.

tax, and not an unapportioned direct tax on property or a confiscatory levy which deprives taxpayers of their property without due process of law.

2. Whether the courts below erred in reaching the same conclusions with respect to the $1.50 increase in the rate of the tax applicable to distilled spirits held in bond on November 1, 1951.

CONSTITUTION AND STATUTES INVOLVED

The pertinent portions of the Constitution of the United States (Article I, Sections 2, 8, 9, and the Fifth Amendment) and of the relevant statutes (Sections 2800, 2878, 2879, 2880, 2883, 2885, 2900, 2901 and 3070 of the Internal Revenue Code of 1939, and Sections 5001, 5004, 5005, 5006, 5011, 5012, 5061, 5193, 5194, 5232, 5242, 5246, 5247, 5248, 5331 and 7851 of the Internal Revenue Code of 1954) are set forth in the Appendix, *infra*, pages 20–38.

STATEMENT

The facts, recited below, must be considered in the light of the following basic statutory provisions. A tax on "all distilled spirits in bond or produced in * * * the United States," at the rate of $10.50 per proof gallon, was "levied" by Section 2800 (a) of the 1939 Code, and is "imposed" by its successor, Section 5001 (a) (1) of the 1954 Code. Prior to an amendment of Section 2800 (a), effective November 1, 1951, the rate of tax was $9 per proof gallon. The tax is payable, as to spirits deposited in internal revenue bonded warehouses, upon withdrawal of the spirits and within eight years from the date of deposit.

Section 2879 (b) of the 1939 Code, and Sections 5006 (a) (2) and 5061 (a) of the 1954 Code.

The material facts[1] may be summarized as follows:

Taxpayers, Schenley Distillers, Inc. (Schenley) and Joseph S. Finch and Company (Finch), are wholly-owned subsidiaries of Schenley Industries, Inc. Between November 1, 1951, and September 30, 1955, Finch paid distilled spirits taxes at the rate of $10.50 per proof gallon on more than a million proof gallons of distilled spirits (mostly whiskey) which had reached or were approaching the age of eight years in bond. These spirits were owned by Finch and at the times of payment were stored in an internal revenue bonded warehouse of which Finch was proprietor. (R. 4a, 8a.)

Finch had no market for such spirits when the tax was paid and the spirits withdrawn from bond. Thereafter, at such times as Finch was able to find a market, the spirits were bottled for marketing. Prior to bottling a total of 13,062 tax-paid gallons evaporated. (R. 8a–9a.)

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[1] The District Court dismissed the taxpayers' complaint because, as its opinion reveals, it concluded that the complaint failed to state a claim upon which relief could be granted. Thus the material facts must be derived from the allegations of the complaint. However, it should be noted here that taxpayers' lengthy complaint (R. 3a–42a) is replete with arguments as to the meaning and effect of statutory and constitutional provisions, and factual allegations which do not relate to the damage allegedly suffered by taxpayers or to the taxes involved in this litigation. The Government's statement herein refers to such extraneous matter only so far as necessary to indicate the basic framework of taxpayers' complaint.

Together, taxpayers withdrew an aggregate of 26,110,000 proof gallons between November 1, 1951, and September 30, 1955, and paid the tax of $10.50 per proof gallon. All of these spirits were distilled prior to November 1, 1951; were stored in bonded warehouses of which taxpayers were proprietors; were owned, for the most part, by Finch; and an unspecified portion of them had reached or were approaching the age of eight years in bond, at the times of withdrawal and tax payment. (R. 36a–38a.)

In taxpayers' complaint the first claim—on behalf of Finch alone—was for refund of the total amount of tax paid (plus interest) on that portion of 1,000,000 gallons withdrawn which evaporated prior to bottling, *i. e.*, 13,062 gallons. (R. 9a.) In support of this claim taxpayers contended that the entire distilled spirits tax of $10.50 per proof gallon is a direct tax on property as to spirits deposited in bond, because it must be paid within eight years of deposit without reference to whether there is a market for the spirits, and hence that the tax (since it is unapportioned) violates Article I, Section 2, clause three, and Article I, Section 9, clause four, of the Constitution. (R. 11a-12a.)

Taxpayers further contended, in support of their first claim, that the eight-year limitation for withdrawal of whiskey from bond and payment of tax violates the Fifth Amendment's guaranty of due process. In relation to this contention the complaint set forth many factual allegations relating to damage sustained by the distilling industry in general, as well as by taxpayers, by reason of the eight-year provision

together with predictions of future damage to taxpayers and the industry. These allegations, briefly summarized, follow:

There was a mounting oversupply of spirits in bond throughout the country during the period from November 1, 1951, through September 30, 1955. Upon the outbreak of the Korean conflict in 1950, the distilling industry had embarked on high levels of production because (1) it feared renewal of wartime restrictions on production, (2) it anticipated a substantial increase in consumer demand, and (3) it hoped the tax on distilled spirits would be reduced within a few years and that such reduction would provide an additional spur to consumer demand. None of these expectations was fulfilled. (R. 13a–16a.)

Owing to the lack of a market, Finch and other distillers sustained considerable financial losses in connection with the withdrawal of spirits from bond during the period in question. (R. 23a–24a.) Taxpayers' whiskey was suitable only for blends, and the market had been steadily declining for blends and all non-Kentucky whiskey. (R. 19a, 27a–28a.) Under such unfavorable circumstances, taxpayers (like other distillers) were forced to dump their whiskey on the market for what it would bring or to redistill it. (R. 21a, 22a.)

Taxpayers further predicted that the eight-year limitation will cause great damage to the distilling industry in the indefinite future. (R. 25a–28a.) And they alleged that the losses sustained by the distilling industry were reflected in losses of revenue to the

Government and that the eight-year limitation was responsible for both. (R. 30a *et seq.*)

Taxpayers' second claim for refund related to the taxes which they paid on the withdrawal from bond of 26,110,000 gallons during the period from November 1, 1951, to September 30, 1955. This claim was not for a refund of the entire tax paid ($10.50 per proof gallon), but only for the $1.50 per gallon increase in the tax which became effective November 1, 1951 (plus interest and certain adjustments). (R. 36a–39a.) In support of this claim taxpayers incorporated by reference (R. 36a) their contention under the first claim that the entire tax was an unapportioned direct tax, and contended alternatively (R. 40a–41a) that at least the $1.50 increase was an unapportioned direct tax because of the eight-year limitation. Taxpayers also contended, in support of the second claim, that the $1.50 increase was an exaction constituting deprivation of property without due process of law, in violation of the Fifth Amendment (R. 40a–41a), and they incorporated by reference (R. 36a) their allegations under the first claim relating to due process.

In response to taxpayers' complaint, the Government filed a motion to dismiss the complaint or, in the alternative, to strike it. The District Court decided only that the complaint should be dismissed for failure to state a claim on which relief could be granted (Pet. App. B, pp. 4–5.) The Court of Appeals agreed with this conclusion. (Pet. App. A, pp. 1–8.)

ARGUMENT

Taxpayers renew here their contentions that the federal tax on distilled spirits (or at least the $1.50 increase in the rate of the tax effective in 1951) is unconstitutional, so far as it relates to spirits deposited in bond, because of the eight-year limitation for the withdrawal of such spirits from bond and payment of the tax. The courts below have rejected these contentions, holding that both the distilled spirits tax and the 1951 increase thereof constitute a valid excise. Taxpayers do not now contend that this holding is in direct conflict with any decision of this Court or of other courts. They concede (Pet. 4) that the case is one of first impression, but assert (Pet. 4, 8–13) that the decisions below are contrary to the "import" of *Pollock* v. *Farmers' Loan & Trust Co.*, 157 U. S. 429, opinion on rehearing, 158 U. S. 601, and subsequent decisions of this Court. Taxpayers err in this assertion, as shown below. And this error stems, in large part, from taxpayers' fundamental misconception of the taxing scheme with respect to distilled spirits. Contrary to their repeated assertion (Pet. 3 *et seq.*), no tax is "exacted" by the eight-year limitation; the tax is imposed by other provisions and, as will appear, the eight-year limitation is merely a permissive provision extending relief which Congress need not have granted at all.

1. A tax on production or manufacture is, of course, a classic type of valid excise and not a direct tax on the property produced or manufactured.

Flint v. *Stone Tracy Co.*, 220 U. S. 107, 151. In the opinion below, the Court of Appeals noted (Pet. App. A, p. 4) that "It is conceded that Congress could have enacted a distillation tax," *i. e.*, an excise on production. And this is precisely what Congress has done, as the courts below held, and as appears from the clear language of the statutes, their legislative history, and the unanimous construction in the decided cases.

The tax is "levied" in part on all distilled spirits "produced in" the United States. Section 2800 (a), 1939 Code (Appendix, *infra*, p. 21). Or, in the terms of the 1954 Code, the tax is "imposed" on all such spirits. Section 5001 (a) (1) (Appendix, *infra*, p. 29). The tax attaches to distilled spirits "as soon as this substance is in existence as such * * *." Sections 2800 (e), 1939 Code and 5001 (b), 1954 Code (Appendix, *infra*, pp. 22, 30). As to spirits not deposited in an internal revenue bonded warehouse, the tax must be paid at the time of distillation. Sections 2800 (b) (2), 1939 Code and 5006 (c), 1954 Code (Appendix, *infra*, pp. 22, 32).

Historically, the distilled spirits tax was first enacted expressly as an excise on distillation and (with the exception of a tax on capacity of distilleries in force from 1813 to 1817) it has retained its primary character as a distillation tax ever since.[2] This has

[2] Section 15, Act of March 3, 1791, c. 15, 1 Stat. 199; Act of July 24, 1813, c. 25, 3 Stat. 42; Section 11, Act of July 1, 1862, c. 119, 12 Stat. 432; Section 1, Act of March 7, 1864, c. 20, 13 Stat. 14; Section 55, Act of June 30, 1864, c. 173, 13 Stat. 223; Sections 1 and 4, Act of July 20, 1868, c. 186, 15 Stat. 125; Section 1, Act of March 3, 1875, c. 127, 18 Stat. 3[illegible]; Section 18, Tariff Act of 1894, c. 349, 28 Stat. 509; Sections

been repeatedly recognized by this and other courts. *United States* v. *Rizzo*, 297 U. S. 530; *United States* v. *One Ford Coupe*, 272 U. S. 321; *Thompson* v. *United States*, 142 U. S. 471; *Burke* v. *Mingori*, 128 F. 2d 996 (C. A. 10th), certiorari denied, 317 U. S. 662. The tax was specifically characterized as a "basic production tax" by this Court in *United States* v. *One Ford Coupe, supra*, p. 328, and by the Tenth Circuit in *Burke* v. *Mingori, supra*, p. 997. And as recently as December 4, 1957, in *Erie Railroad Co.* v. *United States*, 156 F. Supp. 908, the Court of Claims invoked the above-cited decisions of this Court in holding, with respect to Section 2800 of the 1939 Code (Appendix, *infra*, p. 21), that (p. 910) "the tax is one on the production of distilled spirits, and not a consumer's tax as plaintiffs insist."

As an excise on distillation, the tax could be collected at the time of distillation. However, Congress has allowed the payment of tax to be deferred in the case of certain types of spirits, provided they are deposited in bond, for the following reasons explained by this Court in *Taney* v. *Penn Bank*, 232 U. S. 174, 183–184:

> It is a matter of common knowledge that the product [whiskey] is not ready to be marketed for consumption when it is drawn from the still. It must undergo an aging process and for

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300, Revenue Act of 1917, c. 63, 40 Stat. 300; Section 600, Revenue Act of 1918, c. 18, 40 Stat. 1057. Legislation of the prohibition era and of the 1930s need not concern us here, for the basic features of the taxing scheme as developed from 1791 to 1919 were incorporated in the 1939 Code and then in the 1954 Code.

> this purpose it is kept in store for several years. In laying the tax, Congress has taken this necessity into consideration permitting a long postponement of the required payment, the spirits meanwhile being held in charge of the Government's representative. * * *

In short, the deferment of tax payment as to spirits deposited in bond is a relief provision for the benefit of the distiller and parties in interest. *United States* v. *Witten*, 143 U. S. 76, 78; *United States Fidelity & Guaranty Co.* v. *United States*, 220 Fed. 592, 594 (C. A. 4th); *Erie Railroad Co.* v. *United States*, *supra*.

The period of deferment was one year under the Act of July 20, 1868, *supra;* was extended to three years by the Joint Resolution of March 28, 1878, 20 Stat. 249; and was further extended to eight years by the Tariff Act of 1894, *supra*. Except for the prohibition era, the eight-year limitation for withdrawal of spirits from bond and payment of tax has been in effect ever since 1894. Within the past few weeks Congress has seen fit to extend the period to twenty years.[1] Whatever the period of deferment, it remains a "postponement of the required payment," in the language of *Penn Bank*, quoted above. As a valid excise on production, the tax accrues at the time of distillation—and the incidence of the tax is not altered by the eight-year limitation, or by other provisions of law which allow tax relief with respect to spirits which evaporate or otherwise are lost in speci-

[1] Excise Tax Technical Changes Act of 1958, P. L. 85-859, 72 Stat. 1275, Section 201, signed by the President on September 2, 1958.

fied ways while in bond.[5] *Erie Railroad Co.* v. *United States, supra,* p. 911. Such allowances for spirits lost while in bond are, like the eight-year limitation, simply *relief* provisions which must be strictly construed. *Farrell* v. *United States,* 99 U. S. 221; *Thompson* v. *United States,* 142 U. S. 471.

Taxpayers seek to obscure the relief character of the eight-year limitation by asserting (Pet. 5, 13) that the law "commanded" them to put their whiskey in bond. It is true that whiskies must be removed from distilleries to bonded warehouses, unlike certain other spirits. Sections 2879 (a), 2883 (a) and (d), 1939 Code (Appendix, *infra,* pp. 24, 26–27), and Sections 5193 (a), 5194 (a) and (e), 1954 Code (Appendix, *infra,* pp. 34–35). But this is simply in order that the spirits may remain under Government supervision until the tax is paid. There is no *minimum* bonding period whatever; the whiskey may be removed whenever the tax is paid. There is only a *maximum* period for postponing the payment of what is, as demonstrated above, a valid excise on distillation.

The distilled spirits tax is not only a valid excise on production; since 1894 it has also been a valid

[5] Section 2901 (a), 1939 Code (Appendix, *infra,* p. 28); Section 5011 (a), 1954 Code (Appendix, *infra,* p. 32). The 1939 Code also provided that spirits in bond shown to be unfit for beverage purposes could be voluntarily destroyed without payment of tax. Section 2901 (a) (2) (Appendix, *infra,* p. 28). The 1954 Code extended this relief, allowing voluntary destruction without regard to the quality of spirits and also allowing greater latitude in redistillation of spirits free of tax. Sections 5011 (b) and 5094 (f) (Appendix, *infra,* pp. 33, 35).

excise on the privilege of holding spirits in bond. In successive enactments prior to 1894, raising the rate of the distilled spirits tax, Congress failed to extend the new rates to existing stocks of spirits in bond. The result, as noted by the court below (Pet. App. A, p. 5), was speculation and unfair competition between owners of existing stocks and distillers of new spirits. Accordingly, Section 48 of the Tariff Act of 1894, *supra*, made the tax imposed by that Act applicable not only to spirits thereafter distilled but to all spirits in bond at the date of enactment on which no tax had yet been paid. This extension of the taxing scheme has continued in force to the present day, the tax being levied not only on spirits "produced in" the United States, but also on spirits "in bond" in the United States. Section 2800 (a), 1939 Code; Section 5001 (a) (1), 1954 Code.

In its incidence upon spirits "in bond," the tax is laid upon a substantial privilege—or rather, a bundle of privileges associated with holding spirits in bond, including the postponement of tax payment and the remission of tax as to spirits evaporated and otherwise lost while in bond. That such a privilege tax is a valid excise is abundantly confirmed by decided cases. As this Court has held, excises are not limited in incidence to manufacture and sale, but extend to vocations, occupations, and *privileges* of every description. *Steward Machine Co. v. Davis*, 301 U. S. 548, 582–583; *Thomas v. United States*, 192 U. S. 363, 370. Nor need the privilege involve an active

use of property. *Flint* v. *Stone Tracy Co., supra,* pp. 166–167, and cases there cited and discussed.*

Moreover in *Patton* v. *Brady,* 184 U. S. 608, the constitutional validity of an excise on existing stocks of tobacco was confirmed on an even broader basis, this Court upholding as well settled the validity of excises imposed (p. 617) "upon goods intended for consumption * * * *at some time intermediate the beginning of manufacture or production and the act of consumption.*" (Italics supplied.) There a floor stocks tax was imposed on the mere passive holding of tobacco for sale; here, as to spirits "in bond," it is validly imposed on the privileges associated with holding spirits in bond.

In its incidence on the privilege of holding spirits in bond, the tax accrues as of the date of deposit and only collection of the tax is deferred under the eight-year limitation provision. That provision, as already demonstrated, does not alter the nature or thrust of the tax but simply mitigates the burden which would otherwise fall upon distillers of whiskey and parties in interest if Congress required—as it certainly could—that the tax be paid forthwith upon distillation of the spirits, or upon deposit in bond.

2. The $1.50 increase in the distilled spirits tax, effective in 1951, was an increase in the *rate* of tax

Billings v. *United States,* 232 U. S. 261, and *Pierce* v. *United States,* 232 U. S. 290, cited by taxpayers (Pet. 8), construed a statute as expressly imposing a tax on the active *use* of yachts. No constitutional question was therefore reached as to an excise with respect to property not used, although other constitutional questions were raised.

imposed under the existing tax scheme, and it must be construed as an integral part of that scheme. *United States* v. *Jefferson Electric Co.*, 291 U. S. 386, 398; *United States* v. *Barnes*, 222 U. S. 513, 520–521. As already stated, the incidence of the distilled spirits tax, since 1894, has been upon distillation, and upon the privilege of holding spirits in bond.

Insofar as the $1.50 increase, like the prior rate of tax, was laid on the privilege of holding in bond, *Patton* v. *Brady*, *supra*, is controlling. There this Court sustained as a valid excise an *increase* in a floor stocks tax on *existing* stocks of tobacco. Here the impact of the tax is on holding in bond, instead of holding for sale, but the former is the same type of privilege as the latter—a passive privilege of which taxpayers continued to avail themselves for the future. Moreover, spirits in bond are certainly held and intended for ultimate sale, and the possibility that they may not actually be marketed is no more material than the possibility that, after payment of a floor stocks tax, tobacco held and intended for sale may be burned or otherwise destroyed.

Insofar as the $1.50 constituted an increase of the tax as a tax on distillation, it was imposed on a past act, but that did not transform it into a tax on something other than production or make it a tax on property. To paraphrase the holding of this Court in *Milliken* v. *United States*, 283 U. S. 15, 24, "a mere increase in the tax, pursuant to a policy of which" taxpayer were "forewarned at the time" they "elected to exercise the privilege [here of distillation], did not

change its character" as an excise. Taxpayers were forewarned of the $1.50 increase, as will appear below.

Taxpayers invoke *Dawson* v. *Kentucky Distilleries Co.*, 255 U. S. 288 (Pet. 12), but that case is inapposite. It involved a state statute which purported to impose a license tax, but which was construed by this Court as levying a tax on the removal of spirits from bond. As shown above, this Court and other courts have repeatedly recognized that the eight-year limitation provision is not a tax-levying provision but a provision which *postpones* the payment of a valid excise, for the benefit of whiskey distillers and parties in interest.[7]

3. Taxpayers are equally in error in their contention that the eight-year limitation deprives them of their property without due process of law, because the rate of tax is so high and because they had no immediate market for their eight-year old spirits. Of course the distilled spirits tax is high, but a confiscation of property does not occur simply because a tax imposes a heavy burden on taxpayers. *Flint* v. *Stone Tracy Co.*, *supra*, pp. 167, 169. And this Court has observed that liquors and tobacco are appropriate

[7] Nor, it may be added, is there any conceivable conflict with *Pollock* v. *Farmers' Loan & Trust Co.*, *supra*, where on rehearing this Court (158 U. S., pp. 622-624) expressly exempted from the scope of its decision excises laid on articles of consumption, noting with approval Alexander Hamilton's description of taxes on articles of consumption as "excises" and hence not falling into the constitutional classification of "direct" taxes. That *Pollock* is inapplicable is confirmed, if confirmation be necessary, by this Court's later decision in *Patton* v. *Brady*, *supra*, discussed in the text *supra*.

objects of the excising power because they are regarded as luxuries." *Patton* v. *Brady, supra,* p. 617.

In fact, taxpayers do not assert that the rate of tax, in and of itself, is confiscatory. The crux of their complaint is that they had no immediate market for their eight-year old spirits. But taxpayers' lack of an immediate market has no bearing on the constitutionality of the tax; in the words of the court below (Pet. App. A, p. 8), that is a matter "of economic conditions, not unconstitutional tax law."[8] As already shown, the eight-year limitation provision is a *relief* provision which mitigates, not increases, the burden of the distilled spirits tax by permitting postponement of payment for a maximum period of eight years. As also noted (*supra*, p. 10), this relief provision has just been further liberalized by Congress through legislation, made applicable to existing stocks in bond, permitting the postponement of payment of the tax for a maximum of twenty, instead of eight, years.[9]

[8] According to the allegations of taxpayers' complaint, these economic conditions were of taxpayers' own making. The oversupply of spirits resulted from mistaken calculations on the part of distillers that there would be an increase in consumer demand, a renewal of wartime restrictions on production, and a reduction of the tax rate on spirits.

[9] Taxpayers do not mention this legislation, which had not reached final enactment when they filed their petition, but they do take cognizance of other recent legislation under which, as they concede (Pet. 7), they will not be entitled to recover any of the taxes here involved so far as passed on to the consumer. The effect of this legislation is to render the amounts recoverable by taxpayers in this litigation purely conjectural—just as the magnitude of the damage they have actually sustained is

4. The $1.50 increase in the tax cannot be deemed offensive to due process. Insofar as the tax increase fell on the privilege of holding spirits in bond, there was no retroactivity. The privilege of holding in bond is a continuing one, exercisable for the future. A tax increase on the similar privilege of holding for sale was sustained in *Patton* v. *Brady, supra,* not only as a valid excise, but against objections grounded on due process.

The $1.50 increase was retroactive insofar as the distilled spirits tax is upon distillation. But it is equally valid in that respect under the rules applicable to tax increases after the taxable event, as reviewed in *Wilgard Realty Co.* v. *Commissioner,* 127 F. 2d 514, 517 (C. A. 2d), certiorari denied, 317 U. S. 655. Briefly, a retroactive tax increase is not so arbitrary as to amount to a denial of due process (1) if the time of retroactivity is relatively short or (2) if, regardless of the time element, the taxpayers were forewarned of possible tax increases at the time they subjected themselves to tax liability. The present case clearly falls within the second rule, which was enunciated in *Milliken* v. *United States,* 283 U. S. 15.

Ever since 1894 successive increases in the distilled spirits tax have been made applicable to existing

purely conjectural, even accepting the allegations of the complaint as true. So far as appears from those allegations, *all* of the 26,110,000 gallons of spirits here involved have been marketed except for (1) the 13,062 gallons which evaporated after withdrawal and tax-payment (R. 9a), and (2) 551,000 gallons redistilled by Finch in 1956 (R. 22a). There is no allegation that any of the spirits involved were poured down the drain or otherwise destroyed.

stocks of spirits in bond. As shown above, the application of these increases to existing stocks was required by "the practical necessities of an efficient system of taxation," in the language of *Int. Harvester Corp.* v. *Goodrich,* 350 U. S. 537, 547. We have also discussed the long-standing relief provisions which allow abatement of the tax for spirits evaporated in bond and lost in certain other ways. It is clear, then, that the amount of tax which will ultimately be paid on spirits deposited in bond is inherently uncertain—and has often been paid at a higher rate, on withdrawal, than the rate in effect on deposit. Thus, like the statute involved in *Swayne & Hoyt, Ltd.* v. *United States,* 300 U. S. 297, 302, the enactment of the $1.50 increase in 1951 was "free of the elements of novelty and surprise which have led to condemnation, as unreasonable and arbitrary, of other retroactive legislation."

Moreover, taxpayers not only were forewarned of possible increases in the tax rate; they bound themselves, by bonds executed when the spirits involved were deposited in bond, to pay "the tax imposed by law, now or hereafter in force." (Pet. App. A, p. 6.) This Court has held that such undertakings are binding according to their terms, since "[t]he deposit of the spirits in the warehouse was solely for the benefit of the distiller, and to enable him to give bond for the payment of the tax on the spirits, instead of paying the tax at once." *United States* v. *Witten,* 143 U. S. 76, 78. And see, *Farrell* v. *United States,* 99 U. S. 211.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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SEPTEMBER 1958.

APPENDIX

Constitution of the United States:

Article I.

SECTION 2.

* * * * * * *

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

* * * * * *

SECTION 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

* * * * * *

SECTION 9.

* * * * *

No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

* * * * *

Fifth Amendment

No person shall * * * be deprived of life, liberty, or property, without due process of law; * * *.

Internal Revenue Code of 1939:

SEC. 2800. TAX.

(a) *Rate.*—

(1) [As amended by Sec. 533 (a) of the Revenue Act of 1941, c. 412, 55 Stat. 687; Sec. 602 (a) of the Revenue Act of 1942, c. 619, 56 Stat. 798, and Sec. 451 (a) of the Revenue Act of 1951, c. 521, 65 Stat. 452] *Distilled Spirits Generally.*—There shall be levied and collected on all distilled spirits in bond or produced in or imported into the United States an internal revenue tax at the rate of $10.50 on each proof gallon or wine gallon when below proof and a proportionate tax at a like rate on all fractional parts of such proof or wine gallon, to be paid by the distiller or importer when withdrawn from bond. On and after April 1, 1954, the rate of tax imposed by this paragraph shall be $9 in lieu of $10.50.[1]

* * * * *

[1] Prior to the amendment of Section 2800 (a) (1) by Section 451 (a) of the Revenue Act of 1951, the rate of tax prescribed in the former section was $6. But a wartime tax rate of $9 per gallon was still in effect under Section 1650 of the 1939 Code. The increase in rate to $10.50 was made effective on November 1, 1951, by Section 456 of the 1951 Revenue Act.

(b) *Time for payment.*—

(1) *Bonded distilled spirits.*—For time for payment of tax on bonded distilled spirits, see paragraph (1) of subsection (a).

(2) *Distilled spirits not bonded.*—The tax upon any distilled spirits, removed from the place where they were distilled and not deposited in bonded warehouse as required by law, shall, at any time within the period of limitation provided in section 3312, when knowledge of such fact is obtained by the Commissioner, be assessed by him upon the distiller of the same, and returned to the collector, who shall immediately demand payment of such tax, and, upon the neglect or refusal of payment by the distiller, shall proceed to collect the same by distraint. But this provision shall not exclude any other remedy or proceeding provided by law.

* * * * * *

(c) *Time of Attachment.*—The tax shall attach to distilled spirits, spirits, alcohol or alcoholic spirit, within the meaning of subsection (b) of section 2809 as soon as this substance is in existence as such, whether it be subsequently separated as pure or impure spirit, or be immediately, or at any subsequent time, transferred into any other substance, either in the process of original production or by any subsequent process.

(d) *Persons Liable.*—Every proprietor or possessor of, and every person in any manner interested in the use of, any still, distillery, or distilling apparatus, shall be jointly and severally liable for the taxes imposed by law on the distilled spirits produced therefrom.

(e) *Lien.*—

(1) *Property subject to.*—The tax shall be a first lien on the spirits distilled, the distillery used for distilling the same, the stills, vessels, fixtures, and tools therein, the lot or tract of

land whereon the said distillery is situated, and on any building thereon from the time said spirits are in existence as such until (except as provided in paragraph (3)), the said tax is paid.

(2) *Exception during term of bonds.*—No lien shall attach to any lot or tract of land, distillery, building, or distilling apparatus, under the provisions of this subsection, by reason of distilling done during any period included within the term of any bond taken under the provisions of section 2815 (b) (1) (C).

* * * * *

(l) [As added by Sec. 451 (c) of the Revenue Act of 1951, *supra*] *1951 Floor Stocks Tax.*—

(1) *Tax.*—Upon all distilled spirits upon which the internal revenue tax imposed by law has been paid, and which on the effective date of section 451 (a) of the Revenue Act of 1951, are held and intended for sale or for use in the manufacture or production of any article intended for sale, there shall be levied, assessed, collected, and paid a floor stocks tax of $1.50 on each proof-gallon, and a proportionate tax at a like rate on all fractional parts of such proof-gallon.

* * * * *

(26 U. S. C. 1952 ed., Sec. 2800.)

SEC. 2878. DRAWING, GAUGING, AND MARKING OF DISTILLED SPIRITS.

(a) *General Rule.*—Except as provided in section 2883, all distilled spirits shall be drawn from receiving cisterns into casks or packages and thereupon shall be gauged, proved, and marked by a storekeeper-

gauger, and immediately removed into an internal revenue bonded warehouse. * * *

* * * * * *

(26 U. S. C. 1952 ed., Sec. 2878.)

SEC. 2879. DEPOSITS OF SPIRITS IN WAREHOUSES.

(a) *Entry for Deposit.*—The distillers of all spirits removed to an internal revenue bonded warehouse shall enter the same for deposit in such warehouse, under such regulations as the Commissioner may prescribe. * * *

(b) *Time for Payment of the Tax.*—The tax on all distilled spirits hereafter entered for deposit in internal revenue bonded warehouses shall be due and payable before and at the time the same are withdrawn therefrom and within eight years from the date of the original entry for deposit therein; and warehousing bonds hereafter taken under the provisions of the internal revenue laws shall be conditioned for the payment of the tax on the spirits as specified in the entry before withdrawal from the internal revenue bonded warehouse, and within eight years from the date of said entry.

(c) *Bond Required.*—The Commissioner shall prescribe the form and penal sums of bonds covering distilled spirits in internal revenue bonded warehouses and in transit to and between such warehouses: *Provided*, That the penal sums of such bonds covering distilled spirits shall not exceed in the aggregate $200,000 for each such warehouse.

(d) *Renewal of Bond.*—A new bond shall be required in case of the death, insolvency, or removal of the surety or sureties, and may be required in any other contingency affecting its validity or impairing its efficiency, at the discretion of the Commissioner.

And in case the warehouseman fails or refuses to give the bond required, or to renew the same, or neglects to immediately withdraw the spirits and pay the tax thereon, or if he neglects to withdraw any bonded spirits and pay the tax thereon before the expiration of the time limited in the bond, the collector shall proceed to collect the tax by distraint, issuing his warrant of distraint for the amount of tax found to be due, as ascertained by him from the report of the storekeeper-gauger, if no bond was given, or from the terms of the bond if a bond was given. * * *

* * * * *

(26 U. S. C. 1952 ed., Sec. 2879.)

SEC. 2880. WITHDRAWAL FROM WAREHOUSE AND COLLECTION OF TAX ON SPIRITS SUBJECT TO EXCESSIVE LEAKAGE.

(a) *Power of the Commissioner.*—If it shall appear at any time that there has been a loss of distilled spirits from any cask or other package deposited in an internal revenue bonded warehouse, other than the loss provided for in section 2901 (b), which, in the opinion of the Commissioner, is excessive, he may instruct the District Supervisor of the district in which the loss has occurred to require the withdrawal from warehouse of such distilled spirits, and direct the collector to collect the tax accrued upon the original quantity of distilled spirits entered into the warehouse in such cask or package, notwithstanding that the time specified in any bond given for the withdrawal of the spirits entered into warehouse in such cask or package has not expired. If the said tax is not paid on demand, the collector shall report the amount due upon his next monthly list, and it shall be assessed and collected as other taxes are assessed and collected.

* * * * *

(26 U. S. C. 1952 ed., Sec. 2880.)

SEC. 2883 [As amended by Sec. 9 of the Act of February 21, 1950, c. 36, 64 Stat. 6]. TRANSFER OF SPIRITS AT REGISTERED DISTILLERIES.

(a) *Requirements.*—Subject to the provisions of existing law, spirits of one hundred and sixty degrees of proof or more produced at registered distilleries, including registered fruit distilleries (such registered distilleries and registered fruit distilleries being referred to hereafter as "distillery" or "distilleries"), * * * may be withdrawn from the receiving cisterns, without, or after reduction in proof, into approved containers and transferred to any internal revenue bonded warehouse for storage therein, or they may be tax-paid in such approved containers in the cistern rooms of distilleries without being entered into an internal revenue bonded warehouse. * * * Spirits of one hundred and sixty degrees of proof, or more, may be transferred in bond in tank cars * * * and be deposited in storage tanks in any internal revenue bonded warehouse. Such spirits in tanks in internal revenue bonded warehouses distilled at or above one hundred and ninety degrees of proof may be reduced to not less than one hundred and eleven degrees prior to being drawn into packages. Such spirits, upon tax payment, may be withdrawn in approved containers, including pipe lines to contiguous premises, for use for beverage purposes only. * * *

* * * * *

(d) [As amended by the Act of July 3, 1951, c. 208, 65 Stat. 114] *Transfer of Gin and Vodka.*—* * * Upon tax payment, gin and vodka of any proof may be transferred by pipe line from receiving cisterns in

distilleries, * * * to a contiguous tax-paid bottling house or rectifying plant.

* * * * * *

(26 U. S. C. 1952 ed., Sec. 2883.)

SEC. 2885. EXPORTATION OF SPIRITS WITHDRAWN FROM WAREHOUSES.

(a) *Entries, Bonds, and Bills of Lading.*—Distilled spirits may be withdrawn from internal revenue bonded warehouses, at the instance of the owner of the spirits, for exportation in the original casks or packages, without the payment of tax, under such regulations, and after making such entries and executing and filing with the collector of the district from which the removal is to be made such bonds and bills of lading, and giving such other additional security as may be prescribed by the Commissioner, with the approval of the Secretary, and bonds given under this section shall be canceled under such regulations as the Secretary shall prescribe. * * *

* * * * * *

(26 U. S. C. 1952 ed., Sec. 2885.)

SEC. 2900. DATE OF WITHDRAWAL.

(a) *General Rule.*—All distilled spirits entered prior to July 26, 1936, for deposit in a distillery, general, or special bonded warehouse, or after such date entered for deposit in an internal revenue bonded warehouse, shall be withdrawn therefrom within eight years from the date of original entry therein, except as provided in subsection (b) of this section.

(b) *Exception.*—Distilled spirits which on July 26, 1936, are eight years of age, or older, and which are in bonded warehouses, may remain therein after such date; but no allowance for loss by leakage or evaporation shall be made in the case of such spirits with respect to any period after such date: *Provided*, That

loss allowances for such spirits for the period prior to July 26, 1936, shall be made pursuant to the provisions of the Act of February 6, 1925, c. 143, 43 Stat. 808.

(26 U. S. C. 1952 ed., Sec. 2900.)

SEC. 2901 [As amended by Sec. 3 of the Act of February 21, 1950, c. 36, 64 Stat. 6]. LOSS ALLOWANCES.

(a) *Extent.*—No tax shall be collected in respect of distilled spirits lost or destroyed while in bond, except that such tax shall be collected—

(1) *Theft.*—In the case of loss by theft unless the Commissioner shall find that the theft occurred without connivance, collusion, fraud, or negligence on the part of the distiller, warehouseman, owner, consignor, consignee, bailee, or carrier, or the employees of any of them; and

(2) *Voluntary destruction.*—In the case of voluntary destruction unless the distilled spirits were unfit for use for beverage purposes and the distiller, warehouseman, or other person responsible for the tax, obtained the written permission of the Commissioner for such destruction in each case.

* * * * * * *

(c) *Refund of Tax.*—When, in any case where the tax would not be collectible by virtue of subsection (a), but such tax has been paid, the Commissioner shall refund such tax. Nothing in section 2901 as hereby amended, or as heretofore amended, shall be construed to authorize refund of the tax where the loss occurred after the tax was paid.

* * * * * * *

(26 U. S. C. 1952 ed., Sec. 2901.)

SEC. 3070. WITHDRAWAL FROM BOND TAX FREE.

(a) *For Industrial Use*—Domestic alcohol of such degree of proof as may be prescribed by the Commissioner, and approved by the Secretary, may be withdrawn from bond without the payment of internal revenue tax, for use in the arts and industries, and for fuel, light, and power, provided said alcohol shall have been mixed in the presence and under the direction of an authorized Government officer, after withdrawal from the distillery warehouse, with methyl alcohol or other denaturing material or materials, or admixture of the same, suitable to the use for which the alcohol is withdrawn, but which destroys its character as a beverage and renders it unfit for liquid medicinal purposes; * * *.

* * * * * * *

(26 U. S. C. 1952 ed., Sec. 3070.)

Internal Revenue Code of 1954:

SEC. 5001. IMPOSITION, RATE AND ATTACHMENT OF TAX.

(a) *Rate of Tax.*—

(1) *In general.*—There is hereby imposed on all distilled spirits in bond or produced in or imported into the United States an internal revenue tax at the rate of $10.50 on each proof gallon or wine gallon when below proof and a proportionate tax at a like rate on all fractional parts of such proof or wine gallon. On and after April 1, 1955, the rate of tax imposed by this paragraph shall be $9 in lieu of $10.50.

(2) *Products containing distilled spirits.*—All products of distillation, by whatever name known, which contain distilled spirits or alcohol, on which the tax imposed by law has not been paid, shall be considered and taxed as distilled spirits.

* * * * *

(b) *Time of Attachment on Distilled Spirits.*—The tax shall attach to distilled spirits, spirits, alcohol, or alcoholic spirits, within the meaning of section 5002 (b), as soon as this substance is in existence as such, whether it be subsequently separated as pure or impure spirits, or be immediately, or at any subsequent time, transferred into any other substance, either in the process of original production or by any subsequent process.

(26 U. S. C. 1952 ed., Supp. II, Sec. 5001.)

SEC. 5004. LIEN FOR TAX.

(a) *Lien Applicable to Distilled Spirits.*—

(1) *Property subject to lien.*—The tax imposed by section 5001 (a) (1) shall be a first lien on the spirits distilled, the distillery used for distilling the same, the stills, vessels, fixtures, and tools therein, the lot or tract of land on which such distillery is situated, and on any building thereon, from the time such spirits are in existence as such until (except as provided in paragraph (3)) such tax is paid.

(2) *Exception during term of bonds.*—No lien shall attach to any lot or tract of land, distillery, building, or distilling apparatus, under this subsection, by reason of distilling done during any period included within the term of any bond taken under section 5177 (b) (3).

* * * * *

(26 U. S. C. 1952 ed., Supp. V, Sec. 5004.)

SEC. 5005. PERSONS LIABLE FOR TAX.

(a) *General.*—The internal revenue tax imposed by section 5001 (a) (1) on distilled spirits shall be paid by the distiller or importer.

(b) *Domestic Distilled Spirits.*—Every proprietor or possessor of, and every person in any manner interested in the use of, any still, distillery, or distilling apparatus, shall be jointly and severally liable for the taxes im-

posed by law on the distilled spirits produced therefrom.

* * * * *

(26 U. S. C. 1952 ed., Supp. V, Sec. 5005.)

SEC. 5006. DETERMINATION OF TAX.

(a) *Requirements.*—

(1) *In general.*—The internal revenue tax on distilled spirits shall be determined when the spirits are withdrawn from bond. Such tax shall be determined by such means as the Secretary or his delegate shall by regulations prescribe, and with the use of such devices and apparatus * * * as the Secretary or his delegate may require.

(2) *Distilled spirits deposited in internal revenue bonded warehouses.*—The tax on distilled spirits entered for deposit in internal revenue bonded warehouses shall be determined at the time the same are withdrawn therefrom and within 8 years from the date of original entry for deposit therein (except that distilled spirits which on July 26, 1936, were 8 years of age or older and which were in bonded warehouses on that date, may remain therein).

(b) *Excessive Loss.*—If it appears at any time that there has been a loss of distilled spirits from any cask or other package deposited in an internal revenue bonded warehouse, other than the loss provided for in section 5011, (a), which, in the opinion of the Secretary or his delegate, is excessive, he may require the withdrawal from the warehouse of such distilled spirits, and direct the officer designated by him to collect the tax accrued on the original quantity of distilled spirits entered into the warehouse in such cask or package, notwithstanding that the time specified in any bond given for the withdrawal of the spirits entered into warehouse in such cask or package has not expired. If such tax is not paid on demand it shall be assessed and collected as other taxes are assessed and collected.

(c) *Distilled Spirits Not Bonded.*—The tax on any distilled spirits, removed from the place where they were distilled and (except as otherwise provided by law) not deposited in a bonded warehouse, shall, at any time within the period of limitation provided in section 6501, when knowledge of such fact is obtained by the Secretary or his delegate, be assessed on the distiller of such distilled spirits, and payment of such tax immediately demanded and, on the neglect or refusal of payment by the distiller, the Secretary or his delegate shall proceed to collect the same by distraint. This subsection shall not exclude any other remedy or proceeding provided by law.

* * * * *

(26 U. S. C. 1952 ed., Supp. V, Sec. 5006.)

SEC. 5011. ABATEMENT, REMISSION, REFUND AND ALLOWANCE FOR LOSS OR DESTRUCTION OF DISTILLED SPIRITS.

(a) *Distilled Spirits Lost or Destroyed in Bond.*—

(1) *Extent of loss allowance.*—No tax shall be collected in respect of distilled spirits lost or destroyed while in bond, except that such tax shall be collected—

(A) *Theft.*—In the case of loss by theft, unless the Secretary or his delegate finds that the theft occurred without connivance, collusion, fraud, or negligence on the part of the distiller, warehouseman, owner, consignor, consignee, bailee, or carrier, or the employees of any of them; and

(B) *Voluntary destruction.*—In the case of voluntary destruction, unless such destruction is carried out under subsection (b).

* * * * *

(3) *Refund of Tax.*—In any case where the tax would not be collectible by virtue of subsection (a) (1), but such tax has been paid, the

Secretary or his delegate shall refund such tax. No tax shall be remitted or refunded under this subsection where the loss occurred after the tax was determined (as provided in section 5006 (a)), and the spirits withdrawn from bond.

* * * * * * *

(b) *Voluntary Destruction.*—The distiller, warehouseman, or other person responsible for the tax imposed by this chapter with respect to any distilled spirits in bond may voluntarily destroy such spirits, but only if such destruction is under such supervision, and under such regulations, as the Secretary or his delegate may prescribe.

* * * * * * *

(26 U. S. C. 1952 ed., Supp. V, Sec. 5011.)

SEC. 5012. DRAWBACK.

(a) *Drawback on Exportation of Distilled Spirits in Distillers' Original Packages.*—Distilled spirits on which all taxes have been paid may be exported, with the privilege of drawback, in distillers' original casks or packages containing not less than 20 wine gallons each, on application of the owner thereof to the Secretary or his delegate, under such regulations and on the filing of such bonds, reports, returns and applications and the keeping of such records as the Secretary or his delegate may prescribe. * * *

* * * * * * *

(26 U. S. C. 1952 ed., Supp. V, Sec. 5012.)

SEC. 5061. METHODS OF COLLECTING TAX.

(a) *Collection by Return.*—The taxes on distilled spirits * * * shall be paid by return. The Secretary or his delegate shall, by regulation, prescribe the period for which such return shall be filed, the time for filing such return, the information to be shown in such return and the time for payment of such tax: *Provided, how-*

ever, That, notwithstanding this subsection, the taxes shall continue to be paid by stamp until the Secretary or his delegate shall by regulations provide for the payment of the taxes by return.

* * * * * *

(26 U. S. C. 1952 ed., Supp. V, Sec. 5061.)

SEC. 5193. DRAWING, GAUGING, AND MARKING OF DISTILLED SPIRITS.

(a) *General Rule.*—* * * Except as otherwise provided by law, all distilled spirits shall be drawn from receiving cisterns into casks or packages, and thereupon shall be gauged and marked under the supervision of a storekeeper-gauger, and immediately removed into an internal revenue bonded warehouse. * * *

* * * * * *

(26 U. S. C. 1952 ed., Supp. V, Sec. 5193.)

SEC. 5194. TRANSFER OF SPIRITS AT REGISTERED DISTILLERIES.

(a) *Requirements.*—Subject to the provisions of existing law, spirits of 160 degrees of proof or more produced at registered distilleries * * * may be withdrawn from the receiving cisterns, without, or after, reduction in proof, into approved containers and transferred to any internal revenue bonded warehouse for storage therein, or they may, on determination of tax, be withdrawn in such approved containers from the cistern rooms of distilleries without being entered into an internal revenue bonded warehouse. * * *

* * * * * *

(c) *Transfer of Gin and Vodka.*—

(1) *To contiguous premises.*—* * * On determination of tax, gin and vodka of any proof may be transferred * * * to a contiguous tax-paid bottling house or rectifying plant.

* * * * * *

(f) *Redistillation of Spirits.*—Distilled spirits of any proof may be transferred in any approved container from a distillery or an internal revenue bonded warehouse to any distillery for redistillation. * * * on redistillation the redistilled spirits shall be treated the same as if the spirits had been originally produced by the redistiller, and all prior obligations as to taxes and liens shall be superseded.

* * * * *

(26 U. S. C. 1952 ed., Supp. V, Sec. 5194.)

SEC. 5232. BOND REQUIREMENTS.

(a) *General.*—The Secretary or his delegate shall, by regulations, prescribe the form and penal sums of bonds covering distilled spirits in internal revenue bonded warehouses and in transit to and between such warehouses: *Provided,* That the penal sums of such bonds covering distilled spirits shall not exceed in the aggregate $200,000 for each such warehouse. Such bonds shall be conditioned (1) on the withdrawal of the spirits from the internal revenue bonded warehouse within 8 years from the date of original entry for deposit; (2) on payment of the tax on the spirits as determined on withdrawal from the internal revenue bonded warehouse; and (3) on compliance with all provisions of law and regulations relating to the business of warehousing distilled spirits.

* * * * * *

(c) *Renewal Required in Certain Cases.*—New bonds shall be required in case of the death, insolvency, or removal of the surety or sureties, and may be required in any other contingency affecting its validity or impairing its efficiency, at the discretion of the Secretary or his delegate. In case the warehouseman fails or refuses to give the bond required, or to renew the same, or neglects to immediately withdraw the spirits and pay the tax thereon, or if he neglects to withdraw any bonded spirits and

pay the tax thereon before the expiration of the time limited in the bond, the Secretary or his delegate shall proceed to collect the tax.

* * * * * *

(26 U. S. C. 1952 ed., Supp. V, Sec. 5232.)

SEC. 5242. DEPOSIT OF SPIRITS IN WAREHOUSES.

(a) *General.*—The distillers of all spirits removed to an internal revenue bonded warehouse shall enter the same for deposit in such warehouse, under such regulations as the Secretary or his delegate may prescribe. * * *

* * * * * *

26 U. S. C. 1952 ed., Supp. V, Sec. 5242.)

SEC. 5246. TRANSFERS OF SPIRITS IN BOND.

(a) *General.*—Distilled spirits may be transferred in bond between internal revenue bonded warehouses in original packages or in such other packages or containers and under such regulations as the Secretary or his delegate may by regulations prescribe.

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(26 U. S. C. 1952 ed., Supp. V, Sec. 5246.)

SEC. 5247. WITHDRAWAL OF SPIRITS FOR EXPORTATION.

(a) *Entries, Bonds, and Bills of Lading.*—Distilled spirits may be withdrawn from internal revenue bonded warehouses, at the instance of the owner of the spirits, for exportation in the original casks or packages, or in packages filled from such original casks or packages, without the payment of tax * * *

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(26 U. S. C. 1952 ed., Supp. V, Sec. 5247.)

SEC. 5248. WITHDRAWAL OF SPIRITS WITHOUT PAYMENT OF TAX.

(1) For provisions relating to withdrawal of spirits, without payment of tax, to manufacturing bonded warehouses, see section 5522.

(2) For provisions relating to withdrawal of spirits, without payment of tax, as supplies for certain vessels and aircraft, see 19 U. S. C. 1309.

(3) For provisions authorizing regulations for withdrawal of spirits, without payment of tax, for use of United States, see section 7510.

(4) For provisions relating to withdrawal of distilled spirits, without payment of tax, to foreign-trade zones, see 19 U. S. C. 81c.

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(26 U. S. C. 1952 ed., Supp. V, Sec. 5248.)

SEC. 5331. WITHDRAWAL FROM BOND FREE OF TAX.

(a) *For Industrial Use—*

(1) *Denaturation required.*—Domestic alcohol of such degree of proof as may be prescribed by the Secretary or his delegate, may be withdrawn from bond without the payment of internal revenue tax, for use in the arts and industries, and for fuel, light, and power, provided such alcohol shall have been mixed in the presence and under the direction of an authorized Government officer, after withdrawal from the distillery warehouse, with methyl alcohol or other denaturing material or materials, or admixture of the same, suitable to the use for which the alcohol is withdrawn, but which destroys its character as a beverage and renders it unfit for liquid medicinal purposes; * * *.

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(26 U. S. C. 1952 ed., Supp. V, Sec. 5331.)

SEC. 7851. APPLICABILITY OF REVENUE LAWS.

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(b) *Effect of Repeal of Internal Revenue Code of 1939.*—

(1) *Existing rights and liabilities.*—The repeal of any provision of the Internal Revenue Code of 1939 shall not affect any act done or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause, before such repeal; but all rights and liabilities under such code shall continue, and may be enforced in the same manner, as if such repeal had not been made.

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(26 U. S. C. 1952 ed., Supp. V, Sec. 7851.)

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